

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl.No. 3482 of 2007(K)

CRIME NO.489/06 OF CHERPULASSERY POLICE STATION
CRMP.1637/2007 of DISTRICT COURT, PALAKKAD
.....

PETITIONER/ACCUSED NO.9

KRISHNAKUMAR, S/O.LATE SIVASANKARAN NAIR
ALANGAT HOUSE, AMBALAVATTOM, PANAMANNA,
ANANGAD, OTTAPPALAM, PALAKKAD DISTRICT.
NOW RESIDING AT VAYYAT HOUSE, VEETAMPARA,
VARODE P.O., OTTAPPALAM, PALAKKAD DISTRICT.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS: COMPLAINANT

STATE OF KERALA - REPRESENTED BY THE
SUB INSPECTOR OF POLICE, CHERPULASSERY,
OTTAPPALAM, PALAKKAD DISTRICT THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 3482 of 2007

Dated this the 27th day of June, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 120B and 302 I.P.C. Altogether there are 14 accused persons. The petitioner is the 9th accused. The crux of the allegations is that the petitioner was greatly aggrieved by the conduct of the deceased, who allegedly murdered his father and mother. The petitioner is a person employed abroad. He allegedly, before he left India, made arrangements for the liquidation of the deceased. He met persons, who were willing to accomplish the task on his behalf for consideration. He allegedly advanced certain amounts to such person. In furtherance of that conspiracy the accused, who are available in India, in the absence of the petitioner, implemented the project of the conspiracy on 21.12.2006. Investigation is in progress. Some of the co-accused have been arrested. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the deceased was a person against whom many had animus. It would be

idle to assume that the petitioner had any role in the crime merely because he has also a grouse against the deceased. In these circumstance the mere existence of motive should not persuade the court to come to any conclusion against the petitioner. There is no satisfactory data to establish any nexus for the petitioner with the crime of murder. In these circumstances it is prayed that the petitioner may be granted anticipatory bail.

3. The learned Prosecutor opposes the application. He submits that sufficient materials have been collected by now to indicate that the petitioner had played a leading role in the conspiracy to eliminate the accused, against whom he had bitter animosity and motive. In these circumstances the learned Prosecutor submits that it would be inexpedient, unnecessary and unjust to permit the petitioner to arm with an order of anticipatory bail at this stage. The petitioner has to be interrogated and arrested, if necessary. Such arrest and interrogation is absolutely necessary for proper resolution of the crime committed. Allowing the petitioner to remain on bail even before he is interrogated and arrested, if necessary, would hamper the smooth course of investigation, submits the Prosecutor.

4. I find merit in the opposition raised by the learned Prosecutor. Powers under Section 438 Cr.P.C. are not to be invoked as a matter of course. An order of anticipatory bail virtually converts a non-bailable offence under law to a bailable offence. Compelling reasons must be shown to exist for the superior courts - Sessions Court and High Court - to invoke such powers. Even the fact that the petitioner may be entitled for regular bail when he approaches the court after arrest is no reason by itself to justify the invocation of such powers. I am certainly of the opinion that the police must be given sufficient opportunity to complete the investigation in a proper and efficient manner without placing any fetter on their powers to arrest and interrogate the petitioner.

5. This application is accordingly dismissed. It is for the petitioner to appear before the Investigating Officer or the learned Magistrate and resort to the ordinary and normal course available to him under law to seek regular bail.

(R. BASANT)
Judge